REGD. GOA - 5

Panaji, 24th July, 2000 (Sravana 2, 1922) SERIES II No. 16

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

Order

No. CL/Pub-Awards/97/4407

The following Award dated 12-8-1997 in Reference No. IT/32/95 given by the Industrial Tribunal, Panaji-Goa is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour.)

Panaji, 22nd August, 1997.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/32/95.

Workmen
Rep. by the General Secretary,
A.C.G.L. Workers Union,
Honda, Sattari Goa. — Workman/Party I

V/s

The Managing Director,
M/s Automobile Corporation
of Goa Ltd.,
Honda, Sattari Goa. — Employer/Party II

Workmen/Party I represented by Shri Subhash Naik.
Employer/Party II represented by Adv. M. S. Bandodkar.

Dated: 12-8-1997.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order No. 28/39/95-LAB dated 3-8-95 referred the following dispute for adjudication by this Tribunal.

"Whether the demand for 20% Bonus for the accounting year 1993-94 raised by the workmen employed at M/s Automobile Corporation of Goa Ltd., Honda-Sattari Goa, who are represented by the Automobile Corporation of Goa Ltd. Workers Union is legal and justified ?

If not, to what relief the workmen are entitled to ?"

2. On receipt of the reference, a case was registered under No. IT/32/95 and registered A/S notices were issued to the parties. The Workmen/Party I (For short "Union") filed statement of Claim which is at Exb.3. The case of the Union in short is that it is registered with the Registrar of Trade Unions under the provisions of Trade Union Act, 1926 and over 400 workmen of the Employer/Party II (For short "Employer") are its members. The employer is doing well business and makes huge profits. The Union has been raising demands with the employer from time to time for improvement in wages and service conditions and settlements have been arrived at with regards to wages and service conditions of the workmen. The employer has been paying Bonus every year to the workers for the last several years as per the Payment of Bonus Act and the employer has been also paying ex-gratia alongwith Bonus. For the financial year 1992-93, the Union demanded 20% Bonus from the employer. The employer did not concede to t

demand of 20% bonus, but paid bonus at the rate of 8.33% and an ex-gratia of 7.67% for the year 1992-93. M/s Goa Auto Accessories Limited, which is an ancillary unit of the employer and much smaller unit compared to the employer had paid to the workmen Bonus cum ex-gratia of 20% for the year 1992-93. Since the employer has been making huge profits, the Union contended that the workmen are legally entitled to 20% Bonus for the financial year 1992-93 as per the provisions of the Payment of Bonus Act. As the employer did not exceed to the demand of the Union, an industrial dispute was raised by the Union before the Labour Commissioner, Government of Goa, Panaji. The dispute was admitted in conciliation. However, the conciliation proceedings ended in failure and a failure report was submitted to the Government by the Assistant Labour Commissioner. The dispute as regards non-payment of 20% Bonus for the financial year 1992-93 is pending before this Tribunal for adjudication. For the financial year 1993-94 also,the Union demanded payment of 20% Bonus. However, the employer refused to comply with the demand of the union for payment of 20% Bonus. the Union thereafter raised an industrial dispute and the conciliation proceedings held having ended in failure, the present dispute was referred by the Government to this Tribunal for adjudication. The Union contended that the employer has been making huge profit and has sufficient allocable surplus for the year 1993-94 and the employer cannot discriminate as far as payment of Bonus/ex-gratia is concerned between its workers and the workers of the ancillary unit. The Union therefore submitted that its demand for 20% Bonus is legal and justified and the employer should be directed to pay to the workers 20% Bonus for the financial year 1993-94.

3. The employer filed written statement which is at Exb. 4. The employer stated that the quantum of Bonus to be paid is determined by the available surplus and the allocable surplus as defined by Sec. 2(6) and Sec. 2(4) respectively of the payment of Bonus Act, 1965. The employer stated that considering the set-off allocable surplus available upto 1992-93, there is no available surplus for the accounting year 1993-94. The employer stated that the issues involved in the present case are similar to the issues raised for the accounting year 1992-93 with reference to which, the dispute is pending before this Tribunal. The employer stated that in view of the common issues involved and considering that the allocable surplus available as at the end of 1992-93 will have a bearing on the quantum of Bonus for the year 1993-94 and hence, the present case should be kept in abeyance until determination of issues involved relating to the accounting year 1992-93.

4. On the pleadings of the parties, issues were framed at Exb. 5 and subsequently, the case was fixed for the evidence of the Union.

On 24-7-97, when the case was fixed for hearing, the Union as well as the employer filed an application dated 24-7-97 at Exb. 8, stating that the dispute between the parties with respect to the Bonus for the year 1993-94 was settled by signing an overall settlement dated 1st April, 1997. The Parties produced a copy of the said settlement. In the said application, the Union and the Employer prayed that the case be disposed off as no dispute survives in view of the settlement dated 1-4-1997.

5. in the present case, the dispute as regards the payment of 20% Bonus for the accounting year 1993-94 was raised by the Union and the reference was made by the Government to this tribunal for adjudicating the said dispute. By application dated 24-7-97, Exb. 8, the union and the employer have submitted that the dispute between them for the Payment of Bonus for the accounting year 1993-94 has been settled by settlement dated 1-4-97 and that the dispute does not survive. Since as per the parties themselves, the matter has been settled, dispute does not exist and consequently, the reference does not survive

In the circumstances, I pass the following order.

ORDER

It is hereby held that the reference does not survive since dispute does not exist in view of the settlement of the Payment of Bonus between the Union and the employer by settlement dated 1-4-1997.

No order as to costs. Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Award/97/7828

The following Award dated 18-2-1998 in Reference No. IT/42/92 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 12th March, 1998.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Ajni, Hon'ble Presiding Officer)

Ref. No. IT/42/92

Smt. Surekha S. Mahadik,
Rep. by Goa Government
Employees Association,
213/D, Govinda Building,
Panaji Goa — Workman/Party I

V/s

Goa Medical College,
Bambolim Goa, — Employer /Party II

Workman/Party I represented by Adv. Shri D. P. Bhise.
Employer/Party II represented by Adv. Shri A. Aga.

Dated:- 18-2-1998.

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order bearing No. 28/21/92-LAB dated 23-7-1992 referred the following dispute for adjudication to this Tribunal.

"Whether the action of the Goa Medical College, Panaji, in terminating the services of Smt. Surekha S. Mahadik, with effect from 5-10-1988 is legal and justified ?

If not, to what relief the workperson is entitled ?"

2. On receipt of the reference, a case was registered under No. IT/42/92 and registered AD notices were issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workman/ /Party I (For short "Workman") filed her statement of claim which is at Exb. 3. The facts of the case in brief as pleaded by the workman are that she was appointed as a sweeper in the Goa Medical College, Panaji from 1-6-82 vide order dated 19-6-1982 and she completed the probation period of two years successfully on 31-5-84. That she worked in Goa Medical College continuously for 6 years and three months without any break in service. That some times she had to take leave/ /extra-ordinary leave on account, of her pregnancies, deliveries sickness of children etc. and leave was sanctioned from time to time. That the employer/ /Party II (For short "Employer") terminated her services by order dated 5-10-1988 under rule 5(1) of the CCS(T.S) Rules, 1965. That the employer exercised the powers under rule 5(1) of the CCS(T. S) Rules, 1965 arbitrarily and with malafide intention. The workman contended that the termination of her services is illegal and in violation of the provisions of Article 311(2) of the Constitution of India. The workman therefore, prayed that she be reinstated in service with full back wages.

3. The employer filed the written statement which is at Exb. 4. The employer stated that the workman did not complete the probationary period of 2 years to the satisfaction of the employer and hence the probation period was extended. The employer stated that the workman was never confirmed in her post as she did not complete the probation period satisfactorily. The employer stated that the workman was a habitual absentee and was remaining on leave unauthorisedly and without sanction, and for this reason, Memo/warnings were issued to her on several occasions. The employer stated that the services of the workman were properly terminated under the CCS (Temporary) Rules 1965 as she was a temporary sweeper and had not completed the probation period satisfactorily. The employer denied that the workman could claim protection under article 311(2) of the Constitution of India or that her services were terminated with malafide intention. The workman thereafter filed Rejoinder which is at Exb.5. In the Rejoinder, the workman denied that she had completed probation period satisfactorily. The workman stated that the employer for the first time after 10 years from the date of her appointment has come out with a case that she had not completed her probation period satisfactorily. The workman stated that the employer sanctioned periodical increments to her each year and annual increments are released only on assessing the performance in the previous year. The workman stated that her probation period was not extended by any specific order or memorandum as required under the service rules. The workman stated that she did not remain absent on any false grounds but was on account of her own sickness or that of her children and due sanctioning of earned leave/extra ordinary leave to her and her absence cannot be called as un-authorised absence.

4. On the pleadings of the parties, following issues were framed at Exb.6.:

1. Does Party I-Workman prove that she had satisfactorily completed the probation period of two years?

2. If yes, does she prove that her services were illegally terminated by the Party II as alleged?

3. If Yes, is Party I entitled to any relief?

4. What award or order?

5. My findings on the issues are as follows:-

Issue No. 1 : In the affirmative. But in the negative in the deemed continued period of probation.

Issue No. 2 : In the negative

Issue No. 3 : In the negative

Issue No. 4 : As per order below

REASONS

5. *Issue No 1 :-* It is not in dispute that the workman was appointed as a Sweeper with effect from 1-6-1982. the workman has produced the letter of appointment dated 19-6-82 Exb. W-1 wherein it is stated that she is appointed to the post of sweeper w.e.f. 1-6-1982 and that she will be on probation for a period of 2 years from the date of her appointment. This means that her probation period was to expire on 31-5-84. The workman has examined herself and her deposition is on record. She has stated that she did not receive any intimation from the employer that her probation period was extended. In the present case, the employer has not examined any witness. There is no evidence from the employer to show that the workman had not completed her probation period satisfactorily. The employer has also not denied that the probation period of the workman was not extended. The only defence which the employer has taken is that the workman was not confirmed because she used to remain absent un-authorisedly. In the cross examination of the workman, the employer has suggested to the workman various periods during which she is said to have remained absent un-authorisedly. As per the employer himself, the said unauthorised absence period starts from 19-5-85 which means that there was no authorised absence on the part of the workman during her probation period which ended on 31-5-1984. The employer has not produced any other evidence to show that the performance or the conduct of the workman was not satisfactory between the period of her appointment till the end of her probation period. therefore, in the absence of any evidence to the contrary, it cannot be held that the workman did not satisfactorily complete her probation period of two years. However, the Supreme Court in the case of Pratap Singh V/s Union Territory of Chandigarh reported in AIR 1980 SC 57, has held that a probationer cannot be deemed to be automatically confirmed in the absence of express order of confirmation and the probation is deemed to be continued, Unless the rules expressly provided for the same. In the present case, there are no such rules. Therefore, after the initial probation period of 2 years had expired since there was no express order of confirmation, the probation of the workman was deemed to have been extended till her services were terminated. The workman herself has produced a memo dated 20-8-89 Exb. W-1 issued to her by the Administrative Officer of the employer. The said memo shows that the workman was irregular in attending to her duties and her absence was treated as Extra-Ordinary Leave. By this memo she was also issued a warning. The irregular absence of the workman was subsequent to the completion of initial probation period of 2 years. In the cross examination, she has stated that she used to send notes whenever she used to remain absent. However, she did not produce the copy of the said notes. Therefore, it cannot be said that the workman completed the deemed extended probation period satisfactorily. In the circumstances, I hold that the workman completed her initial probation period of 2 years successfully but not the deemed extended period of probation and answer the Issue No.1 accordingly.

6. *Issue No. 2 :-* It is the contention of the workman that termination of her services by the employer is illegal and unjustified. Adv. Shri Bhise, the learned counsel for the workman has submitted that the employer terminated the services of the workman by way of punishment and since no enquiry was held prior to termination as required under Art. 311 of the constitution of India, the order of termination is illegal. In support of his this contention, he has relied upon the decision of the Madhya Pradesh High Court in the case of Madhu Sudan Gupta V/s State of Madhya Pradesh reported in 1991 II CLR 652. He has further submitted that the employer could not have terminated the services of the workman under Rule 5(1) of the C.C.S. (temporary service) Rules, 1965 because she is deemed to have been confirmed in her post as her probation period was not extended and an employee cannot be kept on probation for a period of more than four years. He relied upon the decision of the Supreme Court in the case of State of Gujarat V/s Akhilesh C. Bhargav & others reported in (1987) 4 SCC 482 in support of his this contention. he has also submitted that all the past conduct of the workman as regards her absentism has been closed by the employer by giving warning to her vide letter dated 20-8-86 and there is no evidence of subsequent unauthorised absentism. Adv. Shri Ashraf Agha, the learned counsel for the employer on the other hand has submitted that the appointment of the workman was temporary as can be seen from the letter of appointment dated 19-6-82 Exb. W-1 and her services were terminated in terms of rule 5(1) or the C.C.S.(Temporary Service) Rules, 1965. His contention is that quasi-permanancy under rule 3 of the said rules cannot be claimed by the workman because there should be a declaration to that effect from the Government. He has submitted that there is nothing like automatic confirmation in case probationary period is not extended unless the rules provide for the same. In support of his this contention he has relied upon the decision of the Supreme Court (1) in the case of Pratap Singh V/s Union Territory of Chandigarh and another reported in AIR 1980 SC 57, and (2) in the case of Kedar Nath Bahl V/s The State of Punjab and others reported in AIR 1972 SC 873. Adv. Shri Aga has contended that the services of the workman who was appointed on temporary basis was validly terminated after giving to her one month's notice as required under the rules.

7. The first point for consideration is whether the workman is deemed to be confirmed in the post if the probation is not extended after the completion of the initial probation period of 2 years as contended by Adv. Shri Bhise, the learned counsel for workman. His contention is that an employee cannot be kept on probation for a period of more than 4 years. It is no doubt true that the workman was appointed temporarily and was to be on probation for a period of 2 years from the date of her appointment, as can be seen from her letter of appointment dated 19-6-82 Exb.W-1. She was appointed with effect from 1-6-82 and hence her probation period was to expire on 31-5-84. There is no evidence on record to show that the probation of the

workman was further extended for any period. Adv. Shri Bhise has tried to argue that since the probation was not extended and as an employee cannot be kept on probation for more than 4 years, the workman is deemed to have been confirmed. I do not agree with this contention of Adv. Shri Bhise. He has not pointed out any rule which says that an employee cannot be kept on probation for more than 4 years, however, he has relied upon the decision of the Supreme Court in the case of Akhilesh Bhargav (Supra). I have considered the said decision, and I am of the view that the said decision is not applicable to the workman. In that case, the concerned employee was appointed to the Indian Police and his services were terminated under Indian Police Service (Probation) Rules, 1954. The probation rules provided an initial period of 2 years probation but did not provide any optimum period of probation. However, there were Administrative instructions issued by the Ministry of Home Affairs, Govt. of India, giving the guidelines to be followed in the matter. the said instructions stated that save for exceptional reasons, probation should not be extended by more than one year and no member of the service should, by convention be kept on probation for more than double the normal period i.e. four years. The Supreme Court also held that the said circular of the Home Ministry was with reference to the Indian police Service (Probation) Rules. It therefore follows that the rule that an employee should not be kept on probation for more than four years and is deemed to be confirmed is applicable to an employee appointed in Indian Police Service only by virtue of the said circular and hence, the workman cannot take any benefit from the same. in the facts of the case therefore, the decision of the Supreme Court in that case is not applicable to the workman. Infact, the workman cannot be deemed to have been confirmed as per the decision of the Supreme Court in the case of Kedar Nath Bahl (Supra) and Pratap Singh (Supra). in the case of Kedar Nath Bahl, the Supreme Court held that when a person is appointed as a Probationer in any post and a period of probation is satisfied, it does not follow that at the end of said specified period of probation, he obtains confirmation automatically even if no order is passed in that behalf. The Supreme Court held that unless the terms of appointment clearly indicated that confirmation would automatically follow at the end of specified period or there is a specific service rule to that effect, the expiration of the probationary period does not necessarily lead to confirmation, and if there is no specific period of confirmation, the person continues in his post as a probationer. The same principles are laid down by the Supreme Court in the case of Pratap Singh (Supra). In the said case also, the Supreme Court has held that a probationer cannot be deemed to be automatically confirmed in the absence of express order of confirmation or in the absence of specific rule in that behalf. This decision of the Supreme Court is based on its earlier decision in the case of State of Punjab V/s Dharam Singh reported in AIR 1968 SC 1210. In this case, the Supreme Court held that if an employee continues in the post even after the expiry of probation period without any specific order of confirmation, he should be deemed to continue in his post as probationer only in the absence of any indication to the contrary in the original order of appointment or the service rules. The Supreme Court held that an express order of confirmation is necessary to give the employee a substantive right to the post and from mere fact that he is allowed to continue in the post after the expiry of the specific period of probation, it is not possible to hold that he should be deemed to have been confirmed and the reason for this conclusion is that, when, on the completion of the specified period of probation the employee is allowed to continue in the post without an order of confirmation, the only possible view to take in the absence of anything to the contrary in original order of appointment or the service rules is that the initial period of probation has been extended by necessary implication. Therefore, as per the above decisions of the Supreme Court, the law is that, when an employee is appointed on probation in a post, even if the probation is not extended after the expiry of the specified period of probation, there is no automatic or deemed confirmation in service unless the terms of appointment indicate that the confirmation would follow automatically on the expiry of the specified period or the service rules specifically provide for the same. In the present case, the letter of appoinment of the workman Exb. W-1 colly does not indicate that on the expiry of the probation of 2 years, the workman stood automatically confirmed, nor the Civil Service Rules provide for such automatic confirmation. Therefore, the contention of the workman that she is deemed to have been automatically confirmed on the expiry of the probation period because the probation was not extended has no substance. As per the saw laid down by the Supreme Court, the workman continued to be on probation. Therefore, the workman cannot claim protection enjoyed by a confirmed employee.

8. Now, since the appointment of the workman was temporary and she continued to be on probation, the employer terminated her services under rule 5 (1) of the Central Services (Temporary Services) Rules, 1965 by giving her one month's notice as provided under the said rule. The notice and the order are produced at Exb. W-3 and W-4 respectively. The receipt of the one month's notice dated 1-9-88 Exb. W-3 is admitted as the workman herself has produced the said notice. The contention of the workman is that the termination of her services is in fact by way of punishment because of her alleged un-authorised absence, and therefore, she ought to have been chargesheeted and an enquiry ought to have been held under Art. 311 of the Constitution applies only when the services of an employee are to be terminated for misconduct. In the present case, the notice dated 1-9-88 Exb. W-3 nor the order dated 5-10-88 Exb. W-4 mention that the services of the wokman were terminated by way of punishment because of her unauthorised or habitual absence. The termination is by way of discharge simpliciter. It does not cast any stigma on the workman. It has been laid down by the Supreme Court in number of cases that the Court has powers to find out whether the order of termination is simpliciter or it is by way of punishment.

In the case of Nepal Singh V/s State of U. P. and others reported in 1980 (3) SCC 288, the Supreme Court has held that if the material against the Government servant on which the superior authority has acted, constitutes the motive and not the foundation for the order, the order is not passed by way of punishment but is merely an order of termination simpliciter. The Supreme Court has further held that the circumsatances that disciplinary proceedings had been initiated against him earlier does not lead to the inference that the impugned order was by way of punishment. In the case of G. B. Pant, Agricultural & Technology University V/s Kesho Ram, reported in 1994 (4) SCC 437, the employee was a temporary employee. The Supreme Court held that the services of the employee was terminated for the reason that he was irregularly absent without obtaining leave and therefore, termination simpliciter is not per se by way of punishment nor does it visit with penal consequences and it cannot be said to be for misconduct.

9. In the present case, the workman was appointed to the post of Sweeper temporarily, and she continued to be on probation even after the expiry of the probation period of 2 years as per the law laid down by the Supreme Court in various cases referred to hereinabove. The services of the workman were terminated under Rule 5(1) of the C.S.S. (Temporary Service) Rules 1965 which empowers the Government to terminate the services of an employee by giving one month's notice. The burden was on the workman to show that termination was by way of punishment for misconduct. There is no evidence on record to indicate that the services of the workman were terminated for her habitual or unauthorised absence which was treated as misconduct. Merely because warning was given to the workman in the memo dated 20-8-86 Exb. W-2 that disciplinary action would be taken against her if she continued to remain absent does not mean that her services were terminated by way of punishment. The said warning was issued to the workman on 20-8-86, whereas her services were terminated by notice dated 1-9-88 which is more than 2 years after the said warning was given. Therefore, by any stretch of imagination, it cannot be infered, that the termination was on account of the said warning. The workman in her evidence has admitted that she used to remain absent, but stated that she used to send notes. The workman hereself has produced leave memos at Exb. W-7 colly which show that she was in the habit of going on leave quite often. The memo dated 20-8-86 Exb. W-2 also shows that the workman was remaining absent very often and her absence was treated as Extra-Ordinary Leave. The workman was appointed as a Sweeper in the Goa Medical College and her duty was to keep the hospital premises clean. It is but natural that due to her absence, the cleanliness work was affected when cleanliness is much more required in the hospital premises. Therefore, in my view, absence from duty constituted the motive for terminating the services of the workman under Rule 5(1) of the C. C. S. (Temporary Services) Rules 1965 and not the foundation for passing such an order. Hence, Art. 311 of the Constitution of India did not apply to the workman. Therefore, I am of the view that the workman has failed to prove that the employer terminated her services illegally. I hold that the termination of the services of the workman by the employer is legal and justified. This being the case, answer the issue No. 2 in the negative.

10. *Issue No. 3:*— This issue pertains to whether the workman is entitled to any relief. While deciding the issue No. 2, it has been held by me that the termination of the services of the workman is legal and justified. Hence, workman is not entitled to any releif. I therefore, hold that the workman is not entitled to any relief and hence I answer this issue in the negative.

In the circumstances, I pass the following order:—

ORDER

It is hereby held that the action of the Goa Medical College, Panaji, in terminating the services of Smt. Surekha S. Mahadik, Sweeper, with effect from 5-10-1988 is legal and justified. It is hereby further held that Smt. Surekha S. Mahadik is not entitled to any relief.

No order as to cost.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/97/8046

The following Award dated 9-3-1998 in Reference No. IT/48/97/83 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisons of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 25th March, 1998.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/48/97

Workman, Rep. by the President,
Kamgar Sena, Shiv Sena Central
Office, Carvalho Building,
Mapusa, Bardez Goa. — Workman/Party I

V/s

M/s Bardez Baazar
Consumer's Coop. Society Ltd.,
Morod, Mapusa,
Bardez Goa. — Employer/Party II

Workman/Party I — Absent
Employer/Party II represented by Adv. Shri A. V. Nigalye

Dated:- 09-03-1998.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 the Government of Goa by order No. IRM//CON/MAP/(50)/97/4530 dated 13th August, 1998 referred the following dispute for adjudication by this Tribunal.

"Whether the following demands served by the Kamgar Sena on the management of the Bardez Bazar Consumer's Cooperative Society Limited, Mapusa, Bardez Goa, are legal and justified ?"

DEMANDS

1. *SALARY & WAGES:*— All the employees shall be given the rise of 100% (Hundred percent) to their existing basic salary being paid per month.

2. *DEARNESS ALLOWANCE:*— The D. A. shall be given at existing rate of 150% on basic increased salary as stated at Sr. No. 1 above.

3. *HOUSE RENT ALLOWANCE:*— House rent allowance being paid to all the employees at the rate of 15% shall be given to the increased rate 25% on the basic increased salary.

4. *TRAVELLING ALLOWANCE:*— Travelling Allowances shall be given to the employees at the rate of 20% on the increased basic salary.

5. *OVER TIME:*— Over time shall be given at the double rate of the basic increased salary to all the employees as per Labour Act

6. *TEA ALLOWANCE:*—Tea Allowance being paid, presently the sum of Rs. 50/- per month per employee shall be either given a sum of Rs. 120/- per month per employee or management should provide tea times per day during working days to all the employees.

7. *BONUS:*—The bonus amount shall be given to all the employees in proportion to the profit earned by the society during the past accounting years. The said amount shall not be given less than 20%.

8. *ATTENDANCE BONUS:*—Attendance Bonus shall be given to the employees at the rate of one day's salary including all other allowances if employees remain present on his duty without leave during the month.

9. *STAFF WELFARE:*—Staff Welfare expenses appearing in the balance sheet and the staff welfare facilities actually given on the records to the employees differs. The said fund should be properly utilised for the purpose.

10. *LEAVE FACILITIES:*—The leave facilities shall be given to the employees as follows per year:—

Casual Leave	12 Days
Sick Leave	12 Days
Privilege Leave	30 Days
Total Leave	54 Days

In addition to the above leave, the Government paid holidays of six days as per act should be observed.

11. *MATERNITY LEAVE:*— Maternity leave to all the female employees shall be given 90 days during pregnancy period.

12. *COMPENSATORY HOLIDAY:*— If the employees perform duty on the weekly holiday or the Government paid holiday, they shall be given a compensatory off for their performing duty as above in addition to the over time being paid for that day.

13. *MEDICAL ALLOWANCE:*— Those employees are not covered under the ESIC Scheme, they shall be given M.A. at the rate of 15% on increased basic salary per month.

14. *RETROSPECTIVE EFFECT:*— All the existing facilities which are not covered under the above demands should be continued without any change whatsoever. The retrospective effect should be considered with effect from 1st April, 1996.

"If not, to what revision of wages the workmen are entitled?"

2. On receipt of the reference, a case was registered under No.IT/48/97 and registered AD notice were issued to the parties, who were duly served with the said notice. The case was fixed for filing the Statement of Claim on behalf of the workmen/Party I (For short "Union") on 28-10-97 at 10.30 a.m. On the said date, none appeared on behalf of the Union and Adv. Shri A. V. Nigalye appeared on behalf of the Employer/Party II (For short "Employer") and filed his Vakalatnama. Since none appeared on behalf of the Union on the said date, the case was adjourned and fixed on 14-11-97 for filing of the Statement of Claim on behalf of the Union. On the said date, one Shri P. Sawant remained present on behalf of the Union and prayed for time to file the Statement of Claim. Accordingly, time was granted and the case was fixed for filing statement of claim by the Union on 11-12-97 at 10.30 a.m. However, on the said date, none appeared on behalf of the Union and thereafter, the case was again adjourned to 1-1-1998 at 10.30 a.m. for filing Statement of Calim on behalf of the Union. On 1-1-98 again, no one appeared on behalf of the Union though last opportunity was given to the Union to file Statement of Claim. Adv. Shri Nigalye, representing the employer submitted that he does not want to file any Statement of Claim/Written Statement on behalf of the Employer. He submitted that since the dispute as regards the demands was raised by the Union, it was for the Union to file the Statement of Claim in support of its contention that the demands served on the employer are legal and justified. He submitted that since the Union failed to file any statement of claim in support of its contention, the reference cannot be answered in favour of the Union. He therefore prayed that award be passed holding the demands served by the Union on the management of

the employer as not legal and justified. In the present case, the dispute has been referred by the Government at the request of the Union. It is a settled law that the party who makes a claim has to prove by sufficient evidence that the claim made is legal and justified.

2. The Allahabad High Court in the case of V. K. Raj Industries V/s the Labour Court and others reported in 1981(29) FLR 194, has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court, but the principles underlying the said Act are applicable. The High Court has also held that it is a well settled law that if a party challenges the validity of an order, the burden lies upon him to prove the illegality of that order and if no evidence is produced, the party invoking the jurisdiction must fail. The High Court further held that if the workman fails to appear or to file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he should not be entitled to any reliefs. The Bombay High Court, Panaji Bench, in the case of V.N.S. Engineering Services V/s Industrial Tribunal, Goa, Daman and Diu and another, reported in FJR Vol.71 at page 393 has held that there is nothing in the Industrial Disputes Act, 1947, that indicates the departure from the general rule that he who approaches a Court for a relief must prove his case, i.e. an obligation to lead evidence to establish an allegation is on the party making the allegation, the test being that he who does not lead evidence must fail.

3. The principles laid down by the Allahabad High Court and the Bombay High Court, Panaji Bench, in the above referred cases are applicable to the present case also. In the present case, the contention of the Union was that the demands served on the employer are legal and justified. The dispute was raised by the Union and it is at the instance of the Union that the Government made the reference. Therefore, applying the law laid down by the Bombay High Court and the Allahabad High Court in the above referred cases, the burden was on the Union to prove that the demands served by it on the employer are legal and justified. However, the Union inspite of having being given several opportunities to file the Statement of Claim in support of its contention did not do so. Therefore, there is no material before me to hold that the demands served by the Union on the employer are legal and justified. In the absence of any evidence, the reference cannot be answered in favour of the Union. In the circumstances, I hold that the Union has failed to prove that the demands served by it on the employer are legal and justified. Hence, I pass the following order.

ORDER

It is hereby held that the demands served by the Kamgar Sena on the Management of the Bardez Bazar Consumers Ccoperative Society Limited, Mapusa Bardez Goa are not legal and justified. It is hereby further held that the workmen of M/s Bardez Baazar Consumers Cooperative Society Limited, Mapusa Goa, are not entitled to any relief.

No order as to cost.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub- Awards/98/8957

The following Award dated 22-4-1998 in Reference No. IT/73/97 given by the Industrial Tribunal, Panaji--Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolkar, Ex-Officio Joint Secretary (Labour).

Panaji, 26th May, 1998.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/73/97

Workman,
Rep. by the President,
Goa Trade & Commercial
Workers Union,
Panaji Goa. — Workmen/Party I

V/s

M/s Christine Hoden (I) Pvt. Ltd.,
2nd Arwalle Road,
Cortalim Goa.
— Employer/Party II

Workmen/Party I represented by Adv. Shri Raju Mangueshkar.

Employer/Party II represented by Shri S. R. Hegde.

Dated:- 22-4-98.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act,1947, the Government of Goa by order dated 13-11-1997 bearing No. IRM/CON/SG/(72)/92/5831 referred the following dispute for adjudication by this tribunal.

"Whether the action of the management of M/s Christine Hoden (India) Pvt. Ltd., Cortalim, in refusing to concede the following demands raised by the Goa Trade and Commercial Workers Union is legal and justified.

Demand No. (1) : Pay Scales

It is demanded that the present pay-scale applicable to workperson should be revised on the following basis with effect from 1-7-1988.

Categories	Grade	Revised pay scales
Machine Operator	A	515-40-715-50-965-60-1265 5 5 5
Assistant Machine Operator	B	465-30-615-35-790-40-990 5 5 5
Machine Helper	C	396-20-495-25-620-30-770 5 5 5
Packer	D	450-25-575-30-725-35-900 5 5 5
Packing Helper/ Jr. Watchman	E	387-15-462-20-562-25-687 5 5 5
General Workers	F	395-20-495-25-620-30-770 5 5 5
Watchman	G	455-25-580-30-730-35-905 5 5 5
Jr. Packing Helper/ Jr. General Workers	H	375-15-450-20-550-25-675 5 5 5

Demand No. 2:— Fitment Formulae:

Flat Rise: Step I: It is demanded that each workperson should be given a flat rise of Rs. 250/- to be added to the existing basic salary as on 30-6-98.

Step II: The total of Flat Rise in Step I plus (+) the existing Basic as on 30-6-1988 should be fitted in the revised scale detailed in Demand No. 1. Those falling below the minimum of the pay scale shall be fitted at the starting of the respective pay scales and those falling in between 2 stages in the pay scale shall be fitted at the higher stage in the pay scale.

Demand No. (3) : Seniority Increments:

It is demanded that those workmen who have served the company for a number of years should be awarded seniority increments on the following basis:

a) Those completing 3 years of service as on 1-7-1988 to be awarded one seniority increment.

b) Those completing 6 years of service as on 1-7-1988 to be awarded two seniority increments.

c) Those completing 9 years of service as on 1-7-1988 to be awarded three seniority increments; and

d) Those completing 12 years & above as on 1-7-1988 to be awarded four seniority increments.

Demand No. (4): Variable Dearness Allowance (VDA):

It is demanded for the rise or fall beyond the AAIPI 265 (1960=100); Each work person shall be entitled for VDA @ Rs. 2/- per point.

Demand No. (5): Fixed Dearness Allowance (FDA):

It is demanded that each work person shall be paid a fixed Dearness Allowance @ Rs. 50% of the basic salary without imposing any ceiling on the FDA payable per Month.

Demand No. (6): House Rent Allowance (HRA):

It is demanded that each person shall be paid every month HRA @ 15% on the basic salary as well as PDA.

Demand No. (7): Conveyance Allowance (CA):

It is demanded that each workperson shall be paid Rs. 80/- per Month towards conveyance allowance.

Demand No. (8): Incentive Allowance (IA):

a) Incentive Allowance: Each workperson shall be paid Rs. 52/- p. m. as an Incentive Allowance.

b) Productive Weightage: Whenever a team of 5 packers gives a productivity beyond 56 dozens in a shift, they shall be paid Rs. 5/- per dozen upto 60 dozens a shift; productivity beyond 60 dozens; and a productivity beyond 64 dozens by the 5 packers crew, they shall be paid Rs. 10/- per dozen.

Demand No. (9): Night Shift Allowance (NSA):-

Each work workman be paid a **NSA** @ Rs. 4/- per shift, for 2nd and 3rd shift. Shift **Allowance** shall also be paid to those who work on overtime.

Demand No. (10): Leave Travel Allowance (LTA):-

It is demanded that each workperson should be given LTA @ Rs. 600/- per calendar year.

Demand No. (11): Leave Facilities:-

Privilege Leave:- It is demanded that each workperson shall be allowed 35 days of privilege leave per annum. The P. L. shall be allowed to be accumulated upto 100 days. The workperson shall also have the facility to encash leave in excess of 100 days.

Casual Leave: It is demanded that each workperson shall be allowed 15 days of C. L. per annum, those not availing this facility of C. L. shall be allowed to encashment.

Holidays:- It is demanded that each workperson shall be allowed 14 days holidays per annum.

Demand No. (12): Bed Sheets and Towels:-

It is demanded that each workperson shall be issued 2 bed sheets and two pairs of towels (Turkish Batch) per annum.

Demand No. (13): Gift:-

It is demand that each workperson who has put in 10 years of service at the Christine Hoden (I) Pvt. Ltd. shall be awarded with a Godrej Cupboard.

Demand No. (14): Overtime Facilities:-

It is demanded that whenever the workpersons are required to work on a Sunday, Weekly Off or a Holiday, the management shall pay 3 times the rate of wages and allow a compensatory off within the next 3 days from the date on which the workperson worked on a day of weekly off, Sunday or a Holiday.

Accident Leave:- Whenever a workperson suffers an injury in the course of employment, the management should give special leave to the person with full pay until full recovery.

Demand No. (15): Short Hand Allowance:-

It is demanded that whenever any of the workperson are absent and the remaining workmen are required to continue the CREW JOBS, it is demanded that a SHORT HAND ALLOWANCE be given at the following rate:

One Workman Absent...	Each workman of the crew shall be paid Rs. 5/- per shift;
Two workmen absent...	Each workman of the crew shall be paid Rs. 10/- per shift.
Three Workmen absent...	Each workman of the crew shall be paid Rs. 15/- per shift.
Four workmen absent...	Each workmen of the crew shall be paid Rs. 15/- per shift.

If more than 4 workmen are absent, the workmen shall not present to work on the machinery and the Crew members shall be paid for that shift at 100% of the normal wages.

Demand No. (16): Rainwear & Raincoat:-

It is demanded that each workperson shall be issued a raincoat or an umbrella once a year before the onset of monsoon.

Demand No. (17): Tea & Milk:-

It is demanded that the management ought to give one litre of Milk for every batch of 10 workpersons. The present system of special Tea to the office staff at the cost of the workperson should be done away with.

Demand No. (18): Torches & Batteries:-

It is demanded that each watchman shall be issued one torch every year and adequate number of batteries.

Demand No. (19): Soap:-

It is demanded that each workman shall be issued 2 soap cakes per month.

Demand No. (20): Sanitary Towels:-

It is demanded that the management shall issue one dozen sanitary towels to each workperson per month.

If not, to what relief the workmen are entitled ?"

2. On receipt of the reference, a case was registered under No. IT/73/97 and registered AD notice was issued to the parties. In pursuance to the said notice, the parties put in their appearence. The workmen/Party I (For short "Union") was given opportunities to file the Statement of Claim in support of their demands. However, inspite of the opportunity given, no statement of claim was filed on behalf of the Union. On 30-3-98, when the case was fixed for filing of the Statement of Claim by the Union, none appeared on behalf of the Union and consequently, no statement of claim was filed. Shri S. R. Hedge, the factory Manager of the Employer/Party II (for short "Employer") appeared on behalf of the employer and submitted that he does not want to file any claim statement on behalf of the Employer. He submitted that Award be passed rejecting the claim of the Union.

3. The reference of the dispute was made by the Government at the request of the Union as they

challenged the action of the employer in refusing to concede to their demands. It is a settled law that a party who challenges the legality of the order or the action taken by the employer, the burden lies on that party to prove the legality of the said order or the action. The Allahabad High Court in case of V. K. Raj Industries V/s Labour Court and others reported in 1981 (29) FLR 194 has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court but the principles underlying the said Act are applicable. the High Court has held that it is well settled law that if the party challenges the validity of the order , the burden lies upon him to prove the legality of the order and if no evidence is produced, the party invoking the jurisdiction must fail. The High Court has further held that if the workman fails to appear or to file written Statement or to produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he would not be entitled to any reliefs. The Bombay High Court, Panaji bench in the case of V N S Engineering Services V/s Industrial Tribunal, Goa, Daman & Diu and another reported in FJR Vol. 71 at page 393 has held that the obligation to lead evidence to establish an allegation is on the party making an allegation, the test being that he who does not lead evidence must fail. The Bombay High Court further held that the provisions of Rule 10B of the Industrial Disputes (Central) Rules 1957 clearly indicates that the party who raises an industrial dispute is bound to prove the contentions raised by him and the Industrial Tribunal or the Labour Court would be erring in placing the burden of proof on the other party of the dispute.

4. In the present case, it is the Union who raised the dispute as regards the Charter of Demands and the Government made the reference of the disputes to this Tribunal at the instance of the Union. Therefore, applying the law laid down by the Bombay High Court and the Allahabad High Court in the above referred cases, the burden was on the Union to prove that the action of the employer in refusing to concede the demands raised by the Union is illegal and unjustified. However, inspite of the opportunities being given, the Union did not file any statement of claim in support of their demands. From the conduct of the Union, it is therefore clear that the Union is not interested in pursuing further with the matter. Therefore, there is no material before me to hold that the action of the employer in refusing to concede the demands raised by the Union is not legal and justified. In the absence of any evidence, the reference cannot be answered in favour of the Union. In the circumstanses, I hold that the Union has failed to prove that the action of the employer in refusing to concede the demands raised by the Union is illegal and unjustified.

Hence I pass the following order:-

ORDER

It is hereby held that the action of the management of M/s Christen Hoden (India) Pvt. Limited, Cortalim, in refusing to concede the demands raised by Goa Trade & Commercial Workers Union is legal and justified and the workmen are not entitled to any relief.

No order as to cost. Inform the Government accordingly.

Sd/-

(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No.CL/pub-Awards/97/4553

The following Award dated 18-8-1997 in Reference No. IT/84/94 given by the Industrial Tribunal, Panaji, Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 2nd September, 1997.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/84/94

Workmen,
Rep. by the General Secretary,
A.C.G.L. Workers Union,
Honda, Sattari Goa. — Workman/Party I

V/s

The Managing Director,
M/s Automobile Corporation of
Goa Ltd.,
Honda, Sattari Goa. — Employer/Party II

Workmen/Party I represented by Shri Subhash Naik
Employer/Party II represented by Adv. Shri M. S. Bandodkar.

Dated: 18-8-1997

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order bearing No. 28/30/94-LAB dated 10-8-94 referred the following dispute for adjudication by this Tribunal.

"Whether the demand for 20% bonus for the accounting year 1992-93 raised by the workmen employed at M/s Automobile Corporation of Goa Ltd., Honda, Satari Goa, who are represented by the A.C.G.L. Workers Union, is legal and justified ?

If not, to what relief the workmen are entitled?"

2. On receipt of the reference, a case was registered under No. IT/84/94 and registered AD notices were issued to the Parties. In pursuance to the said notice, the parties put in their appearance. The workmen/ /Party I (For short "Union") filed statement of claim which is at Exb.3. The case of the Union in short is that the workmen of the Employer /Party II (For short "Employer") who are more than 300 in number are the members of the Union known as "Automobile Corporation of Goa Limited Workers Union". The said Union is registered with the Registrar of Trade Union under the provisions of Trade Union Act, 1926. The Union on behalf of the workmen have been raising demands with the Employer for improvement in wages and service conditions, and settlements have signed between the Union and the employer after holding the discussions. The union i.e. Automobile Corporation of Goa Limited, Workers Union is the only Union functioning in the establishment of the Employer as far as Metal Sheet Division is concerned and the said Union is recognised by the Employer. The Employer has been paying to the workmen Bonus every year as per Payment of Bonus Act. Besides bonus the Employer has also been paying ex-gratia alongwith bonus. For the financial year 1992-93, the Union demanded bonus of 20% from the employer, but the employer did not concede to the said demand and paid a bonus of 8.33% and ex-gratia of 6.67% for the year 1992-93. M/s Goa Auto Accessories Limited which is an ancillary unit of the employer and a much smaller unit compared to the employer/Company paid bonus cum ex-gratia of 20% to their workmen for the year 1992-93. The employer has been making huge profits every year as they have a definite for their products and therefore, the employer is legally bound to pay to their workers 20% bonus for the financial year 1992-93. Since the Employer did not exceed to the demand of the Union for payment of 20% bonus to the workmen, an industrial dispute was raised before the Labour Commissioner, Panaji. The said dispute was admitted in conciliation by the Assistant Labour Commissioner, Mapusa as no settlement could be arrived at, a failure report was submitted to the Government. The Union contended that since the employer was making huge profits and has sufficient allocable surplus for the year 1992-93, the demand of the Union for payment of 20% Bonus to the workmen for the financial year 1992-93 is legal and justified.

3. The employer filed written statement which is at Exb.4. The employer stated that the reference is bad in law and not maintainable. The Employer denied that they were making huge profits or that their entire products are being supplied to TELCO Company. The Employer stated that payment of bonus and ex-gratia to the ancillary unit of the employer has no relevance to the subject matter of the present reference. The employer stated that they have paid bonus to the workmen as calculated under the Payment of Bonus Act, 1965. The employer further stated that the bonus amount for the financial year 1992-93 is computed as provided under the Payment of Bonus Act, 1965 and no case exist for the Union to demand bonus more than what has been paid by the employer. The employer therefore contended that the Union is not entitled to the relief as claimed in the statement of claim and the reference is liable to be rejected.

4. On the pleadings of the parties, issues were framed at Exb. 5 and subsequently, the case was fixed for the evidence of the Union.

5. On 24-7-97, when the case was fixed for hearing, the Union as well as the employer filed an application dated 24-7-97 at Exb.8 stating that the dispute between the parties with respect to the bonus for the year 1992-93 was settled by signing an overall settlement dated 1-4-97 between the parties. The parties produced a copy of the settlement dated 1-4-97. In the application, the Union and the Employer prayed that the case be disposed off as no dispute survives in view of the settlement dated 1-4-97.

6. In the present case, the dispute as regards the payment of bonus of 20% for the financial year 1992-93 was raised by the Union and the Government made the reference to this Tribunal to adjudicate the dispute. By application dated 24-7-97, Exb.8, the Union and the Employer have submitted that the dispute between them for the payment of 20% Bonus for the financial year 1992-93 has been settled by settlement dated 1-4-97 and that the dispute does not survive. Since, as per the parties themselves, the matter has been settled, the dispute does not exist and consequently, the reference does not survive.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the reference does not survive since the dispute does not exist in view of the settlement of the payment of Bonus between the Union and the Employer by settlement dated 1-4-97.

No order as to cost.

Inform the Government accordingly.

Sd/
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

ORDER

No.CL/Pub-Awards/97/6047

The following Award dated 19-11-1997 in Reference No. IT/16/97 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 21st November, 1997.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/16/97

Workman,
Rep. by the President,
Z.A.C.L. Employees Union (Goa)
PO: Zuarinagar Goa. — Workman/Party I

V/s

M/s Zuari Agro Chemicals
Limited,
Zuarinagar Goa. — Party II (1)

President, Z.A.C.L. Workers
Union (Goa).
Reg. No. 180,
PO: Zuarinagar Goa (403726) — Party II (2)

Party I represented by Shri A. P. Gaonkar.
Party II (1) represented by Adv. Shri G. K. Sardessai.
Party II (2) represented by Adv. Shri C. V. Singh.

Dated: 19-11-1997.

AWARD

In exercise of the powers conferred by clause (d) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 14th February, 1997, bearing No.IRM/CON/SG/34/96/792 referred the following dispute for adjudication by this Tribunal.

"Whether the demand of Zuari Agro Chemicals Limited Employees Union (Goa), to give them recognition as a majority Union and as a sole bargaining agent in the establishment of M/s Zuari Agro Chemicals Ltd. at Sancoale Goa, is legal and justified in view of the existence of other Unions".

2. On receipt of the reference, a case was registered under No. IT/16/97 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. Initially, the Party I, Zuari Agro Chemicals Limited Employees Union (Goa) and the party II (1) M/s Zuari Agro Chemicals Ltd. Zuarinagar, Goa were the only parties to the reference. Subsequently, the Party II (2) Zuari Agro Chemicals Ltd. Workers Union (Goa) was added as a party to the reference by order dated 17-4-97 on an application made to that effect by the said Union.

3. The Party I/Zuari Agro Chemicals Limited Employees Union (Goa) (For short "Employees Union") filed its statement of claim which is at Exb.8. The facts of the case in brief as pleaded by the Employees Union are that the said Union was formed in the year 1973 and was registered with the Registrar of Trade Unions under the Indian Trade Union Act, 1923 under No.93 on 21-8-1973. On 4th September, 1973, the said Union requested the party II(1) M/s Zuari Agro Chemicals Ltd; (For short "Company") to confer the sole bargaining agent on the said union for the purpose of collective bargaining and the company by letter dated 10-11-73 granted the majority status to the said Union and recognised it as the representative union for the purpose of collective bargaining. In the year 1981, during the pendency of strike, another union was formed known as Zuari Agro Chemicals Workers Union which is the party II(2) (For short "Workers Union"), the membership of which was less than the Employees Union. The workers union by letter dated 14-7-93 requested to the Labour Commissioner stating that it was not a minority union and requested that settlement should not be arrived at between the Employees Union and the Company under Sec.12(3). In pursuance to the letter dated 23/26 July, 1993 from the Labour Commissioner, the employees union furnished to the Commissioner a list of its membership, but since the workers union failed to furnish the list of its membership, the Labour Commissioner unilaterally closed the file. By letter dated 12-12-95, the employees union demanded with the company that the said Union should be conferred the majority and sole bargaining agent status in the establishment of the company and subsequently, by letter dated 2-1-96, the Labour Commissioner in his capacity as Registrar of Trade Unions was requested to expedite the matter. However, the Labour Commissioner by his letter dated 26-2-96 informed the Union that he would intervene only if there is a dispute between the two unions or any other party i.e. either the Union or the Company. Thereafter, the employees Union served a strike notice on the company and in pursuance to the strike notice, the Labour Commissioner held conciliation proceedings which ended in failure. Since the Government remained silent on the failure report, the Union served another strike notice and further conciliation proceedings were held and subsequently,

dispute was referred to this Tribunal. The employees union contended that it has a total membership of 423 members as on the date and the worker's union has a membership of 146 members. The said union contended that the Company has constituted a Provident Fund Trust Operated as Zuari Agro Chemicals Employees Provident Fund Rules, and the Board of Trustees is constituted with equal representation both to the employer and the workman as per Sec. 3(1) of the rules. However, inspite of the letter dated 31-1-95 from the employees union, the Chairman of the Trust did not nominate the employees representative nor replied to the said letter of the Union. The employees Union contended that the concept of majority finds prominent mention in the Industrial Disputes Act itself under Sec. 10 (2), 10A (3A) and Sec. 19 (7) and the Code of discipline forms the bedrock of Union- management relations and Union-Unions relations in the larger interest of industrial peace and harmony for the purpose of collective bargaining and that this has been the guiding principle for deciding the majority status and sole bargaining status for recognition of the union. The employees Union therefore, claimed that it is entitled to be recognised as a majority union and as a sole bargaining agent in the establishment of the company at Sancoale Goa and its demand is legal and justified.

3. The company filed its Written Statement which is at Exb. 9. The company stated that since the year 1981, two Unions namely, the employees Union and the Workers Union operated in the establishment of the company and till the year 1997, settlements were signed with both the Unions on identical terms. The Company stated that as on February, 1997, 434 employees were the members of the employees union and 147 employees were the members of the workers Union. The Company stated that settlements arrived at with the respective unions expired on 31-12-1995 and the said Union submitted their respective charter of demands. However, the employees Union insisted that a single settlement should be signed with the said union being a majority union and this demand was followed by striks notice dated 8-5-96 because of the alleged failure on the part of the company to recognise the said union as a majority union and the sole bargaining agent. The Company stated that the conciliation proceedings held by the Labour Commissioner ended in failure and hence the present reference was made by the Government. The Company stated that in deciding the present reference, the Court should be guided by the Code of discipline or the law laid down by the Courts in the matter of collective bargaining. The company further stated that the proper procedure to determine the matter referred to it under the circumstances is to direct the Registrar of Trade Unions or appoint a Commission to determine the numerical majority in the establishment and in accordance with the guidelines as laid down by the Apex Court from time to time.

4. The Workers' Union filed the written statement which is at Exb. 10. The workers union stated that the present reference is not maintainable as the dispute which is referred is not an "industrial dispute" within the scope and ambit of the Industrial Disputes Act, 1947 and therefore, the reference is liable to be answered in the negative or is liable to be rejected. Without prejudice to the above contention, the workers union stated that it is a registered and recognised Trade Union and represents an over whelming majority of the workmen employed by the Company in administrative, clerical and office jobs at Goa and also at the Regional and liaison officer spread throughout India and is the sole bargainning agent in as far as the said employees are concerned. The Union stated that till the year 1981, there was only one Union namely, the employees union and the workers union came into existence in the beginning of 1981 enrolling vast majority of employees in both the factory as well as the head Office. The Union stated that the membership of the two unions changed over a period of time and the bulk of the workers' union came to consist of workmen employed in administrative categories and also at the Regional and Liaison Offices whereas, the Employees Union came to represent mainly the employees in the factory premises. The workers Union stated that the demands raised by the Employees Union in the year 1980 were referred to the Tribunal for adjudication being reference No. IT/36/1980 and since in the meantime, the workers union came into existence, the company being satisfied about the membership of this Union signed a 2(P) settlement with the workers union and also it was made a party in the reference, and during the pendency of the reference, the employees union accepted the benefits under the said settlement and signed a settlement with the company dated 3-10-81 which was nothing but the verbatim reproduction of the terms of the settlement dated 5-1-81 signed with the workers union by the Company. The Union stated that on a joint application made by the workers union and the employees union, an Award was passed in the terms of the respective settlements. The union stated that the terms of the settlements signed with the company by the respective unions from time to time made it expressly clear that the terms of the settlement would be applicable only to the members of the respective unions. The unions therefore, stated that the company therefore granted recognition under the code of discipline to both the unions, that is, the Workers Union and the Employees Union. The unions stated that the employees union raised certain dispute on the subject of promotion policy, which was referred to the Labour Commissioner and before him a settlement was signed whereby the company agreed to pay Rs. 500/- to the members of the Employees Union. The said settlement was applicable exclusively to the members of the Employees Union which showed that the Employees Union was always concerned about its members only and never took up the cause of the members of the Workers Union nor represented them. The Workers Union stated that it submitted a charter of demands to the company in the year 1993 and requested the Labour Commissioner to intervene. The Labour Commissioner called the General Secretary of the Employees Union for discussion who refused to attend the meeting stating that the subject of discussion on

the charter of demands was within the sole perview of the company. The Workers Union stated that this showed that there was a long standing custom and usage of the settlements between the two unions operating in the establishment of the company. The Workers Union stated that after the expiry of the 1991 settlements, both the unions terminated their respective settlements and commenced negotiations with the company and a settlement dated 20th April, 1994 was signed in conciliation and as per the terms of the said settlement, the same was restricted only to the members of the Employees Union and not to the members of the workers union. As regards the charter of demands submitted by the Workers Union since the issue regarding the parity of allowance was not settled, it was mutually decided to refer Arbitration under section 10-A of the I.D. Act, The Company and the workers union signed a settlement in conciliation dated 22-6-94 which was expressely made applicable to the employees in the Administrative staff, the Head Office and the Regional and Liaison Officer represented by the Workers Union, and by a seperate Arbitration Agreement dated 22-6-94. The Union and the Company agreed to refer the issue of parity in allowance to the Hon'ble Shri P. S. Malwankar, the retired Judge of the Bombay High Court. The workers Union stated that the Employees union challenged the Arbitration proceedings and the matter went upto the Supreme Court and the Supreme Court while disposing of the petition upheld the Arbitration proceedings and incidentally also recognised the prevelant practice of the company of entering into seperate settlements each Union. The Union stated that the above facts made it clear that there is a long drawn established practice of the company entering into seperate settlements with the two Unions representing different categories of Employees and the same has acquired the status of a custom and usage. The workers Union stated that the demand of the Employees union that only it should be recognised as the majority union and as a sole bargaining agent is false and there is no justification for such a demand, as there is a long standing custom and usage and an anomolous situation of two settlements which has been always acquiesed to by the Employees Union and the company and the employees union has failed to bring out the need if any, to vary the long standing custom and usage. The Workers union stated that the numerical strength of the two Unions is to be considered giving due regards to the fact that the factory and the Head Office are two seperate establishments and the Workers union represent an overwhelming majority of the Workers in the Head Office, Regional offices and the Liaison Officer. The workers Union stated that the employees Union is not entitled to any relief as claimed by them in their statement of claim. The employees Union and the company thereafter filed Rejoinder at Exb. 11 and 12 respectively.

5. On the pleadings of the parties, following issues were framed at Exb. 13.

1. Whether the Party II(2) Workers Union prove that the reference is not maintainable as the dispute referred is not an "Industrial Dispute" within the meaning of scope and ambit of the Industrial Disputes Act, 1947 ?

2. Whether the Party I Employees Union prove that the majority of the workmen of the Party II(1) Employer, are its members?

3. Whether the Party I Employees Union proves that its demand for recognition as a majority Union and as a sole bargaining agent in the establishment of Party II(1) is legal and justified ?

4. Whether the Party I Employees Union is entitled to any relief ?

5. What Award ?

6. The issue No. 1 was treated as preliminary issue since it was going to the root of the matter. The parties submitted that no evidence was required to be led on the issue No. 1 as it was purely a question of law. In the circumstances, arguments were heard from the parties on the said issue. Besides advancing oral arguments, the parties also filed their written statement

My findings on the issue No. 1 are in the affirmative.

REASONS

Adv. Shri Singh, the learned counsel for the workers union submitted that the Tribunal has powers to decide as to whether what is in fact referred is an industrial dispute or not as what can be adjudicated upon by the Tribunal is only the industrial dispute as contemplated under section 2(k) of the Industrial Disputes Act, 1947. He submitted that the order of reference shows that the demand of the employees union is not only for its recognition as the bargaining agent on behalf of its own members but the demand is for its recognition as a sole bargaining agent to the exclusion of other unions and therefore, this demand can never be an industrial dispute. He submitted that the demand raised by the employees union is not connected with employment or non-employment or terms of employment or conditions of labour or any person, as contemplated under Sec. 2(k) of the I. D. Act, 1947 nor the second or the third schedule to the I. D. Act, 1947 contain any reference to the type of the dispute which is sought to be raised, and hence the dispute referred cannot be said to be an industrial dispute, Adv. Shri Singh submitted that word "person" referred to in section 2(K) of the I. D. Act means a "Workman" with whom the union espousing the dispute has an identity of interest. In this regard, he relied upon the decision of the Supreme Court in the case of Workmen of Dimakuchi Tea Estate V/s Management of Dimakuchi Tea Estate reported in 1958 SCR 1156. He submitted that a union cannot seek to muzzle the aspirations of non-members by claiming that it alone will represent the non-members and that the non-members should not be allowed to choose their own Trade Union, and if such a demand is made, it is not an industrial dispute as there is no community of interest. He submitted that in the present case, the dispute ipso facto is not a dispute between workmen "and workmen" but is a dispute between two unions representing

different workmen which is a pure inter--union dispute and cannot be given the status of an industrial dispute. In support of his this contention, Adv. Shri Singh relied upon the decision of the House of Lords in the case of I. T. Stratford & Son Ltd V/s Lindly and another reported in (1964) 3 AII. E. R. 102 and Conway V/s Wade reported in 1909 AC 508. He submitted that in the above said cases, the House of Lords have hold that a controversy between two unions which was not connected with the employment or non employment or with the terms of employment or with the conditions of labour of any person did not fall within the perview of the Terms "Trade dispute" as defined under Trade Disputes Act, 1906. He submitted that the term industrial dispute under I. D. Act has a striking similarity and has infact been borrowed to a great extent from the defination of the term "Trade dispute" under the I. D. Act. Adv. Shri Singh submitted that neither the second schedule nor the third schedule nor the fourth schedule to the T. D. Act contains any reference to the type of the dispute which is sought to be raised, which lends support to the contention that the dispute is not an industrial dispute. In support of his contention that the dispute which is referred is not an industrial dispute, Adv. Shri Singh also relied upon the decision of the Bombay High Court in the case of Blue Star Ltd. V/s Blue Star Workers Union and others reported in 1996 I CLR 673; the decision of the Labour Appellate Tribunal of India in the case of Muzaffarpore Electric Supply Workers Union V/s Muzaffarpore Electric Supply Company Ltd; reported in 1957 II LLJ 542 and the decision of the Supreme Court in the case of M/s Tata Chemicals Ltd. V/s The workmen represented by Chemicals Kamdar Sangh reported in 1978 (3) SCC 42.

8. Shri A. P. Gaonkar, representing the employees union on the other hand submitted that the reliefs which are sought by the Employees Union are for confering on it majority and sole bargaining agent status or for issuing necessary directions to the appropriate authorities to determine the majority in the establishment of the Company. He submitted that unless settlements are signed with the Company by the Union, conditions of Labour cannot be improved and the dispute which is referred which is as regards conferring majority and sole bargaining agent status on Employees Union, touches the terms "conditions of labour" as mentioned in Sec. 2(K) of the I. D. Act, 1947 and therefore, the dispute referred is well covered within the meaning of Sec. 2 (K) of the I. D. Act, 1947. He further submitted that the provisions of the Act, 1947, particularly Sec. 19 (7); 10A (3A); 10(2) contemplate a mojority status or pretermination of majority character and therefore, it is obvious that the dispute relating to the determination of majority is nothing but an industrial dispute. In support of his contention that the dispute referred is an industrial dispute, Shri Gaonkar relied upon the decision of the Supreme Court in the case of Assam Chah Karmachari Sangh V/s Dimakuchi Tea Estate reported in 1958 I LLJ 500; the decision of the Kerala High Court in the case of T. C. C. Thoxhilali Union V/s T.C.C. Ltd. reported in 1982 I LLJ 425; The decision of the privy Council in the case of Bethan and another v/s Trinidad Cement Ltd. reported in 1960 I AII E. R. 274; the decision of the Court of Appeals in the case of Torquay Hotel Co. Ltd V/s Cousins and others reported in 1969 I All E. R. 522; the decision of the Bombay High Court in the case of Sidhe V/s Patwardhan passed in Writ petition No. 2710 of 1997, the decision of the Supreme Court in the case of PCI Staff Union v/s Food Corporation of India, reported in AIR 1995 SC. 1344, the decision of the Madras High Court in the case of N. G. Bank Employees Union V/s I. Kannan reported in 1978 LIC 648, the decision of the Supreme Court in the case of Indian Oxygen Ltd. V/s Their workmen reported in AIR 1979 SC 266; the decision of the Supreme Court in the case of General Secretary, Rourkela Shramik Sangh v/s Rourkela Mazdoor Sabha and others reported in 1991 LLN 21; the decision of the Calcutta High Court in the case of workmen (represented by CNC Harijan Sangh) V/s Eight Industrial Tribunal, West Bengal and others reported in 1994 II LLN 331.

9. Adv. Shri G. K. Sardessai, the learned counsel for the Company, supported the contention of the Employees Union that the dispute referred is an Industrial Dispute as envisaged under Sec. 2(K) of the I. D. Act, 1947. He submitted that employment or non employment or the concept of conditions of labour though not defined in the act are the words of the widest emplitude and have been put in juxta position to make the defination of the widest amplitude. He submitted that while in the process of bargaining the conditions of service, a dispute may arise as a result of difference between the employer and a particular Trade Union claiming to represent the workmen to their right to negotiate such terms and conditions on behalf of their members. He submitted that the dispute or difference may also arise as a result of more than one union claiming to represent the workers, and it may be so closely inter-related to the conditions of labour that it is not possible to treat the same as not an industrial dispute. He submitted that collective bargaining is the essential feature of moderm Trade Union movement in the industrial adjudication and it is not possible to contend that the claim of the Trade Union to represent its members and participate in the process of collective bargaining cannot be an industrial dispute. He submitted that there is a similarity in the defination of Trade dispute under the Trade Union Act and the industrial dispute under the Industrial Disputes Act and hence the dispute which has been referred can be called as the "Recognition Dispute". Adv. Shri Sardessai submitted that the schedule II and III to the Industrial Disputes Act is not exhaustive and all the disputes are not contemplated under the said Act and that the residual clause under the schedule II covers the present dispute. He submitted that the Tribunal was to confine itself to the reference and its jurisdiction is to try the dispute referred to it for adjudication by the Government and it is not open to the Tribunal to travel materially beyond the terms of the reference. He further submitted that the adjudicator cannot refuse to adjudicate upon the dispute and surrender its jurisdiction to some other authority and

has no descretion to decide whether to adjudicate or not, though the Government has jurisdiction to refer or not to refer a dispute for adjudication. He submitted that if the recognition or non-recognition of the Trade Union can be an Industrial Dispute, and such recognition may depend upon the requirements laid down in a settlement or an award that a particular number of membership may be the determining factor or condition precedent to the recognition, the Tribunal has to calculate the membership and the determination of the membership is within the jurisdiction of the Industrial Tribunal. He therefore, submited that if the recognition or non-recognition is an Industrial Dispute, the determination of the membership is also an industrial dispute in as much as recognition of the Union is a genus and recognition as a majority union is the species. Adv. Shri Sardessai referred to section 19(7), IGA(3A) and 10(2) of the I. D. Act, 1947 and submittted that from the reading of above said provisions, it is obvious that the majority states has a close inter-relation with the sole bargaining status to the exclusion of the other unions in as much as the industrial law permits the Union having the majority status to represent on behalf of the workman in the organisation irrespective of the membership of the Union and determine the general conditions of service of the employer in the organisation. He submitted that if the Industrial Disputes Act recognises the status of general recognition instead of limited recognition, then, it is expected that the sole bargaining status is a natural consequence of the majority status, and if the statutory authority namely the conciliation Officer recognised such status, there is no reason as to why the Tribunal should be divested of such jurisdiction. Adv. Shri Sardessai therefore, submitted that the dispute which has been referred by the Government is an industrial dispute and this Tribunal has jurisdiction to decide the dispute. In support of his contentions, Adv. Shri Sardessai relied upon the decision of the Privy Council in the case of Betham and another V/s Trinidad Cement Ltd. reported in (1960) 1 AII E.R. 274. The decision of the Court of Court of Appeal in the case of bbc V/s Hearn & Others reported in (1978) 3 All. E.E. 111; the decision of the Employment Appeal Tribunal in the case of Joshua Nilson & Bros. Ltd. v/s Union of Shop Distributive and Allied Workers reported in (1978) 3 All. E.R. 4; the decision of the House of Lords in the case of United Kingdom Association of Professional Engineers and Another V/s Advisory Conciliation and Arbitration Service reported in (1980) 1 All E.R. 612; The decision of the Bombay High Court in the case of N. K. Sen and others V/s Labour Appellate Tribunal of India and others reported in 1953 II LLJ 6; The decision of the Federal Court of India in the case of Western India Automobile Association V/s The Industrial Tribunal Bombay and Others reported in LLJ 246; The decision of the Supreme Court in the case of Sindhu Resettlement Corporation Ltd., V/s Industrial Tribunal, reported in 1968 I LCJ 834; The decision of the Gujarat High Court in the case of Sindhu Resettlement Corporation Ltd. V/s Thakore (I.G.) (Chairman, Industrial Tribunal) and other reported in 1965 II LLJ 268.

10. I have carefully considered the arguments advanced by the parties. The dispute which has been referred by the Government to this Tribunal for adjudication is whether the demand of the Employees Union to give them recognition as a majority Union and as a sole bargaining agent in the establishment of the Company is legal and justified in view of the existence of the other Unions. The Workers' Union has raised the contention that the disputes referred is not an industrial dispute and hence the reference is not maintainable. The first issue for consideration is whether such a contention can be raised by a party to the dispute. The Bombay High Court in the case of Iqbal Ahmed Kamruddin V/s P. L. Muzumdar reported in 1992 (64) FLR 827 in para 8 of its judgement has held as follows:-

> "If what is referred to a Tribunal/Labour Court is not an industrial dispute, it is always open to a party to show to the forum that the dispute referred for adjudication though purported to be an industrial dispute is in reality not an industrial dispute at all ....."

The above principle laid down by the Bombay High Court therefore makes it clear that the Worker's Union is entitled to raise the contention that the dispute referred is not an industrial dispute. The Tribunal has jurisdiction to adjudicate only an industrial dispute and not any other dispute. Now, therefore the question is whether the dispute which is referred by the Government in the present case is not an industrial dispute as contended by the Worker's Union. Industrial Dispute is defined under Sec. 2(K) of the Industrial Disputes Act, 1947 which reads as follows:

> " Industrial dispute means any dispute or difference between employers and employees or between employers and workmen or between Workmen and workmen which is connected with the employment or non-employment or the terms of employment or with conditions of labour or any person"

The Supreme Court in the case of the workmen of Dimakuchi Tea Estate (Supra) has interpreted the word "any person" and has held that the said word cannot mean anyone in the wide world but refers to a person with whom the workmen an a class have identity of interest that is in whose employment, non-employment, terms of employment or the conditions of labour of the workmen in whom the workman as a class have identity of interest. Thus, the industrial dispute envisages a collective dispute, which means there should be a community of interest.

11. In the present case, the demand of the Employees Union is that it should be given the majority status and also should be recognised as the sole bargaining agent to the exclusive of the other Union as can be seen from the Terms of the reference. It is a settled law that a demand by a Union that it should be recognised as a bargaining agent on behalf of its members constitutes industrial dispute and Adv. Shri Singh, the learned

counsel for the worker's union in the course of his submissions rightly conceded this position. In the present case admitedly, as per the terms of the reference, the demand of the Employees Union is different. As I have mentioned above, the demand is for confering majority status on the Employees Union and recognising it as the sole bargaining agent to the exclusion of the Worker's Union. The question is whether this demand can be said to be touching the employment or non-employment, or terms of employment or conditions of Labour or any person. According to the Workers Union, it does not. Adv. Shri Singh, the learned counsel for the worker's Union has submitted that the schedules to the Industrial Disputes Act, 1947 which contain the disputes to be adjudicated upon by the Industrial Tribunal and the Labour Court do not contain the type of the dispute referred to this Tribunal by the Government. The employees Union and the company have contended that even though the dispute referred does not especially cover schedules II and III of the Act, this dispute is covered by the residuary item 6 of the schedule II of the Act. The Employees Union has relied upon the decision of the Madras High Court in the case of National and Grindleys Bank Employees Union V/s I. Kannan and other reported in 1978 Lab. I.C. 646 in this respect. I have gone through the said decision and I agree with the contention of the employees Union and the company. Item No. 6 of the schedule II reads as under:

6. "All matters other than those specified in the third schedule".

I have gone through the decision of the Madras High Court in the case of N&G Bank Employees Union (Supra). The Madras High Court has held that from the item No. 6 it is clear that all the residuary matters come within the jurisdiction of the Labour Court, and therefore, if a dispute is an industrial dispute under the act it is not right to hold that the second schedule and the third schedule do not refer to the dispute and therefore it is not an industrial dispute. The High Court held that assuming that the dispute in question is not one coming under any one of the headings enumerated in the second schedule or the third schedule that by itself would not mean that it is not an industrial dispute. This means that the second schedule is not exhaustive and the dispute though not cover under the second schedule still would be industrial dispute if it is so within the meaning of the "industrial dispute". Therefore, though the type of the present dispute referred is not covered under the second schedule or the third sehedule of the Act, still in view of the residuary item No. 6 of the second schedule, it will have to be seen whether it falls within the meaning of "Industrial dispute " as defined under the act and if it is so, the reference would be maintainable.

12. Adv. Shri Singh, the learned counsel for the Workers Union has contended that the term "industrial dispute" under the Industrial Disputes Act has a striking similarity with the term " Trade Dispute" as defined under the Trade Dispute Act, 1906. His contention is that the present dispute is not an industrial dispute as there is no community of interest, and the dispute ipso facto is not a dispute between workmen and workmen but it is a dispute between two unions representing different workman which is a pure inter union dispute not touching the employment, non-employment, terms of emloyment or conditions of Labour of any person. He relied upon the decision of the House of Lords in the case of J. T. Stratford & Sons Ltd. (Supra) and in the case of Conway (Supra). The employers Union and the company have on the other hand contended that unless the settlement are signed by the company with the union, the conditions of labour of the workman cannot be improved, and therefore, the dispute as regards conferring majority and sole bargaining status touches the term "condition of labour" They have relied upon the decisions of the Supreme Court, of the various High Courts, that of the Privy Council, House of Lords and of the Court of Appeal which have been referred to by me earlier. I agree with the contention of the Employees Union and the Company that the settlement are signed between the union and the company so that the conditions of labour of the workmen are improved. But does it mean that only the majority Union should be allowed to sign the settlement? It is true that there is similarity in the term "industrial dispute" as defined under the Trade Disputes Act, 1906. I have gone through the decisions relied upon by the parties. The gist of the decisions relied upon by the Employees Union and the company are that the issue of recognition of a Union is or can be an industrial dispute because the said dispute touches the term "conditions of labour". In this type of dispute, the employer is directly concerned with. This is a settled law and there cannot be two opinions on this aspect. Adv. Shri Singh, the learned counsel for the Workers Union has accepted this proposition. But the issue involved in the present case is not as regards only the recognition part of the union but it is as regards granting majority status and sole bargaining status on the employees union. The decisions relied upon by the Employees Union and the company do not lay down the proposition that such a dispute falls within the meaning of the "industrial dispute". In the decision relied upon by the Employees Union and the Company, only one union was involved and the dispute was directly with the employer. But in the present case, the dispute cannot be said to be a dispute between only one union that is the Employees union and the company. The present dispute involves the other union also, that is the Workers union, who is also a party to the proceedings before this tribunal. The question is whether, this dispute can be said to be a dispute between workmen and workmen and whether there is community of interest. The Workers Union has relied upon the decisions of House of Lords in the case of J. T. Stratford and Sons Ltd., (Supra) and Conway (Supra), in support of their contention that the dispute infact is an inter union dispute. I have gone through the said decisions. In the case of J. T. Stratford and Sons Ltd., (Supra) the house of Lords has held that when a Union makes a union claim on the employers for bargaining status with a view to regulating or improving the conditions or pay of their workmen and employers

reject the claim, a trade dispute is in contemplation even though no active dispute has arised but a controversy between two unions is an inter-union rivalry which is not connected with employment, non-employment, terms of employment or conditions of labour of workmen and hence not a trade dispute. I would like to mention that in none of the decisions relied upon by the employees union and the company, the dispute involved was of the type or the nature of the dispute involved in the present case. In the said cases, before the Industrial Tribunal there was no issue of deciding majority status of an union or recognising it as the sole bargaining agent to the exclusion of other unions.

13. Giving recognition as a majority union to a union is in fact a dispute between two unions regarding their membership. The Employees Union has filed its statement of claim and the Workers union has filed its written statement. The employees Union in its statement of claim has contended that it is a majority union in the establishment of the company having the membership of 233 members and that the Workers union has the membership of 146 members out of which 85 members are at Goa and the rest are posted in different regions situated in Maharashtra, Karnataka, Andra Pradesh. The Workers Union on the other hand has contended in the written statement that it represents as overwhelming majority of the workmen employed with the company in administrative, clerical and office jobs at Goa and is the sole bargaining agent in so far as the said employees are concerned. Therefore, in fact, both the unions are claiming majority of membership. The Madras High Court in the case of Tamil Nadu Engineering Employees Union v/s The Management of T. I. Cycles of India Ltd., Ambattur and others reported in 1994 Lab. I. C. MOC has held that the dispute between two unions regarding membership of members of unions is not an industrial dispute. The Madras High Court has held as follows:

"The membership of a Union cannot be questioned in an industrial dispute as there is no provision under the Act. It cannot be treated as an Industrial Dispute under four corners of the Act.

When there are two unions claiming mojority of membership conciliation Officer has no power to physically verify membership of union, conciliation officer can only induce portion to come to an amicable and fair settlement of dispute.

Very membership of a union cannot be questioned in an industrial dispute. Majority of membership of a union can only be determined on the basis of records or under the Code of discipline."

Therefore, as per the decision of the Madras High Court in the above case, which is directly on the point in issue, the dispute which has been raised by the employees Union as regards its demand for recognising it as the majority is not an industrial dispute within the meaning of Sec. 2(K) of the Industrial Disputes Act, 1947. The other part of the dispute which has been referred by the Government is- as regards the demand of the employees union for recognising it as the sole bargaining agent in the establishment of the company to the exclusion of the other union, that is, the Workers Union. It has been admitted by the Company that from the year 1981, two Unions were in operation in their establishment namely the Employees Union and the workers Union and the company signed settlements with the respective Unions till the year 1987 in identical terms, and thereafter, seperate settlements were signed with the said Unions in the year 1991, 1994. by raising the present dispute, the employees union is trying to contend that only it should be recognised as the representative body of the Workman in the establishment of the company which means that the other Union namely the Workers Union should be precluded from representing the Workmen or raising any dispute on their behalf. In my view, such a dispute can never be an industrial dispute because the Indian Trade Unions Act, 1926 permits more than one union in an establishment and they are entitled to espouse the cause of the workmen whom they represent. The Kerala High Court in the case of Monthly Rated Workmen of Pierce Leslia and Co. Ltd. V/s Labour Commissioner reported in AIR 1967 Ker. 245 has held that the Indian Trade Unions Act 1926 permitted more than one association of Workmen in the same establishment and does not endow anyone of these associations with a monopoly of the right of representation on the basis of Superior strength of its membership or for any other reason. The Madras High Court in the case of Buckingham and Carnatic Co. Ltd. v/s Its Staff Union reported in AIR 1960 Mad. 106 at para 2 of the Judgement has held as follows:

"So far as we are aware, there is no provision of law which prohibits the existence of more than one union or association of the employees in a particular industrial establishment. There is nothing to prohibit each section of the establishment having a union the membership of which is confined to the employees in that section. Even if all the employees in an establishment are employed in the same kind of work, there may be two different unions with seperate membership. There may also be several industrial establishments the employees in which are not members of any union at all. In this country as yet, there is no organised system of recognised collective bargaining units in respect of each industrial establishment or sections."

The above decisions therefore lay down that it is permissible to have more than one union in the same establishment and each union is entitled to espouse the cause of the workmen whom it represents and further, one union is not entitled to claim that only it shall have the right to represent the workmen in the establishment though it may have on its roll more membership. My view that the demand of the employees union that it should be recognised as the sole bargaining agent to the exclusion of the workers union is not an industrial dispute, is supported by the decision of the Kerala High

Court in the case of T. K. Padmanabha Menon & Others v/s P. V. Kora and Others reported in 1968 Lab. I. C. 1134. In this case, the Kerala High Court considered its own Division Bench decision in the above case of Monthly Rated Workmen of Pierce Leslie & Co. Ltd. (Supra) and that of the Madras High Court in the above case of Buckingham and Carnatic Co. Ltd. (Supra) and held that the contention of the Union that it alone is competent to espouse the cause of the workmen of the Company cannot be sustained under the law. The facts involved in the case before the Madras High Court are almost identical to the one involved in the present case. In that case, there was one union known as Alluminium Factory Workers Union (For short "first union") existing in the company known as Indian Alluminium Co. Ltd. and it represented the Workers in the Company for a number of years. In the year 1965, another union known as Indian Alluminium Company Employees Union (For short "second union") was formed which claimed membership of 184 workers including a few workers in the non--clerical section of the office staff, and the first union claimed that the strength of the second union was much less. In the same year, one more union was formed known as the Indian Alluminium Company Staff Association (For short "third union") and it claimed to represent 39 of the 58 staff members of the clerical staff. The first union claimed the membership of 650 but the second and the third union disputed this claim and stated that the first union had the membership of 350. There was a settlement arrived at between the company and the first union. One of the clauses of the said settlement stated that the first union has been recognised as the sole bargaining agent for the workmen as defined in section 2(S) of the I. D. Act, 1947 as amended from time to time, new employed and hereafter employed by the company during the life of the said agreement. On the expiry of this Agreement, all the three unions submitted fresh Charter of demands. However, the Company arrived at a Settlement only with the first Union. The first union thereafter, filed the Writ Petition before the High Court praying for a writ of prohibition restraining the State of Kerala. The Labour Commissioner, Trivandrum and the District Labour Officer, Always from exercising their powers under Section 10 and 12 of the I. D. Act, 1947, in furtherance of the notices issued by the District Labour Officer for holding joint discussions of the parties for a settlement in respect of the demands raised by the second and the third Union, and in the alternative note to proceed further with the said notices without notice to the first union and without reference to the settlements signed by the Company with the said union. In the said petition, the first union relied upon the said clause of the settlement whereby the Company had recognised the first party as the sole bargaining agent for the workers of the Company. The first Union had contended that the said clause of the settlement precluded other Trade Union from representing the workmen or raising any dispute on their behalf. The Kerala High Court held that this contention of the first union was not sustainable under the law irrespective of the fact whether the settlement was a bipartite settlement or the conciliation settlement. In para 8 of the Judgment, the Kerala High Court held as follows:-

> "Industrial Dispute" means any dispute or difference between employees and employer, or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment of the terms of employment or with the conditions of labour of any person."
>
> "Settlement means a settlement of an Industrial Dispute; and a dispute whether a particular Trade Union alone is competent to represent the workmen of an industry of other Trade unions are also competent to represent them is not obviously an "industrial dispute", as defined in the Act. It is also obvious that an agreement between a trade union and an employer not to recognise and other trade union as representing the workers has no legal effect. It is the fundamental right of the workers to form Trade Union and any Trade Union satisfying the requirements of Trade Union Act, 1926, is entitled to recognition. Existence of more than one Trade Union in an industry is ordinary; and every one of them is entitled to espouse the cause of the workmen whom it represents. A contention to the contrary is hardly stateable..."

The decision of the Kerala High Court is exactly applicable to the facts in the present case. In the present case also, the demand of the Employees Union is that only it should be recognised as the sole bargaining agent in the establishment of the Company which means that the other union namely the workers union should not be recognised as representing the workmen. The dispute raising such a demand obviously is not an industrial dispute.

In the circumstances, in the light of what is discussed above, I hold that the dispute referred by the Government of Goa to this Tribunal for adjudication is not an "industrial dispute" within the meaning of Section 2(K) of the Industrial Disputes Act, 1947 and hence the reference is not maintainable. I therefore, answer the issue No. 1 in the affirmative.

14. Since it has been held by me that the dispute referred is not an "industrial dispute" within the meaning of Sec. 2(K) of the I. D. Act, 1947, and hence the reference is not maintainable, the question of giving findings on the other issues or granting any relief does not arise, and I hold so accordingly.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the dispute referred by the Government of Goa is not an "industrial dispute" within the meaning of Sec. 2 (K) of the Industrial Disputes Act, 1947. It is therefore, held that the reference made by the

Government is not maintainable and hence the same is rejected.

No order as to costs.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/8958

The following Award dated 30-4-1998 in Reference No. IT/65/97 given by the Industrial Tribunal, Panaji--Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 2nd June, 1998.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/65/97

Workmen,
Rep. by the President,
Kamgarancho Ekvott,
Gurudutt Building,
Panaji-Goa. — Workmen/Party I

v/s

M/s. Goa Antibiotics &
Pharmaceuticals Limited,
Tuem, Pernem Goa. — Employer/Party II

Workmen Party I represented by Shri Subhash Naik.
Employer/Party II represented by Shri F. Dias, Manager (Pers & Admn.).

Dated:- 30-4-98.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Government of Goa, by order bearing No. IRM/CON-MAP/(63)/97/5604 dated 31-10-1997 referred the following dispute for adjudication by this Tribunal.

"Whether the demands made by the Kamgarancho Ekvott vide their letter dated 10-3-97 on the management of M/s. Goa Antibiotics & Pharmaceuticals Limited, Tuem, Pernem - Goa, on behalf of their daily wage workmen for:-

(1) Regularisation of the daily wage workmen on permanent posts;

(2) Payment of equal wages for equal work and

(3) Fixation of minimum wages above poverty line wages are legal and justified ?

If not, to what relief the workmen are entitled?"

2. On receipt of the reference, a case was registered under No. IT/65/97 and registered AD notice was issued to the parties. In pursuance to the said notice, the parties put in their appearence. The workmen/party I (For short "Union") was represented by Shri Subhash Naik and the Employer/party II (For short "Employer") was represented by Shri F. Dias, Manager (Personal & Administration). On 29-1-98, when the case was fixed for the hearing, Shri Subhash Naik, representing the Union and Shri F. Dias, representing the employer submitted that the parties have arrived at a settlement and filed the terms of settlement duly signed by the parties dated 29-1-98 at Exb. 3. The parties prayed that Consent Award be passed in terms of the said settlement. I Have gone through the terms of the settlement dated 29-1-98 and I am satisfied that the terms are certainly in the interest of the Workmen. I therefore accept the submissions made by the parties and pass the Consent Award in terms of the settlement dated 29-1-98 Exb. 3.

ORDER

1. The management has agreed to regularise the services of the Casual workers in the following manner.

(i) 25 Workers whose names are mentioned in Annexure A to this settlement shall be regularised w.e.f. 01-10-97.

(ii) 22 Workers whose names are mentioned in Annexure B to this settlement shall be regularised w.e.f. 01-07-98.

(iii) 14 Workers whose names are mentioned in Annexure C to this settlement shall be regularised w.e.f. 01-10-99.

(iv) 6 workers who have opted for housekeeping section as per clause 7 and whose names are mentioned in Annexure D to the settlement w.e.f. 2-2-98 or from the date they start working in housekeeping section. They shall enjoy all facilities and wages as workmen in Annexure A above.

2. It is further agreed between the parties that all the above daily wages workers shall be placed on probation for a period of six months from the date of regularisation in the services of the company as mentioned in clause 1. They shall be confirmed in service in writting after successful completion of the probationary period.

(a) During the probationary period they shall be paid a consolidated salary of Rs. 1550/- per month w. e. f. 01-10-97.

(b) The consolidated salary for those during their probationary period shall be paid Rs. 1750/- p. m. w.e.f. 01-07-98 and Rs. 2000/- p. m. w.e.f. 01-10-99.

3. It is further agreed that the daily wage workers shall be paid daily wages as under:-

(a) Rs. 37/- per day w.e.f. 01-01-96

(b) Rs. 50/- per day w.e.f. 01-07-97

(c) Rs. 57/- per day w.e.f. 01-04-98

(d) Rs. 65/- per day w.e.f. 01-04-99

4. It is further agreed that once the employees are confirmed, they shall be eligible for the benefits as provided in the clause II of the subsisting settlement dated 28-5-1997.

5. It is further agreed that in case of non - availability of work in the company, the management shall lay off workers employed on daily wages as per the provisions of Rule 25-C of the Industrial Disputes Act, 1947. In the event of availability of work, the workers shall report for work within 48 hours failing which they shall not be entitled for lay off wages for such period they don't report for work.

6. It is agreed between the parties that the understanding is arrived at pursuant to and on the basis of settlement on Charter of Demands dated 28-5-1997 and memorandum of understanding on restrictive practices signed on 28th May, 1997 and the terms and conditions of the said settlement and understanding shall also be binding upon the existing daily wage workers in respect of whom this understanding has been arrived at.

7. It is agreed between the parties that as regards the "Housekeeping work", the workers whose names are mentioned in Annexure 'D' to this settlement have opted for working in housekeeping section, namely, sweeping and mopping (internal areas), cleaning and dusting of walls and ceilings, washing internal arears, destruction of expired products, disposal of scrap materials and gardening within the factory premises.

8. The workmen shall not insist to work in particular section/department and do particular job only. They shall attend to all jobs/work that Company shall allot/instruct from time to time. They shall not refuse any work and complete the same even by doing overtime to the entire satisfaction of superiors.

9. The workmen shall carry out loading, unloading of materials/finished goods and also transfer the materials from department to department by trolly. They shall not refuse any work allotted to them by the superiors.

10. It is further agreed that the concerned parties to the aforesaid agreement shall withdraw the formal complaint, issues that are raised in the office of the Assistant Labour Commissioner and/or Office of Deputy Labour Commissioner and shall file this settlement for consent of the Industrial Tribunal which is presently hearing the case in IT/65/97 and other, if any.

11. It is agreed between the partise that arrears arising out of this settlement shall be paid on or before 30th April, 1998.

ANNEXURE "A"

GOA ANTIBIOTICS AND PHARMACEUTICALS LIMITED

Sr.No.	Names	Date of joining
1.	Ms. Kalpana Kaskar	09-03-88
2.	Mr. S. B. Haldankar	10-03-88
3.	Mr. Madan Parab	28-06-88
4.	Mr. J. Tamboskar	28-06-88
5.	Mr. Prakash Raul	02-06-88
6.	Mr. Krishna Mahale	18-08-88
7.	Mrs. Kavita Asolkar	08-12-88
8.	Mr. N. K. Parsekar	08-12-88
9.	Mrs. Deeplaxmi Shetye	20-01-89
10.	Mrs. Namrata Polji	21-01-89
11.	Mr. D. Gadekar	21-01-89
12.	Mr. S. Kolwalkar	23-01-89
13.	Mr. Prakash Chari	22-03-89
14.	Mr. Mahesh Teli	22-08-89
15.	Mr. A. Cardoz	23-03-89
16.	Mr. S. Kauthankar	25-03-89
17.	Mr. A. Kauthankar	04-08-89
18.	Mr. Ravindra Naik	04-08-89
19.	Mr. R. D. Narvekar	03-08-89
20.	Mr. Rama Bandekar	04-08-89
21.	Mrs. Usha Naroji	04-08-89
22.	Mrs. Jyoti Naroji	04-08-89
23.	Mr. John Fernandes	04-08-89
24.	Ms. Neeta Lingutkar	03-08-89
25.	Ms. Shali Naroji	04-08-89

ANNEXURE "B"

Sr. No.	Names	Date of joining
1.	Ms. Sharada Naroji	04-08-89
2.	Mrs. J. Salgaonkar	04-08-89
3.	Mr. Pramod Naik	21-08-89
4.	Mr. Ganpat Parab	22-08-89
5.	Mr. Vishwas Mandrekar	29-08-89
6.	Mr. Pratap Poke	08-09-89
7.	Mr. Suresh Kashalkar	13-11-89
8.	Mr. Rama Chandroji	24-11-89
9.	Mr. Surendra Gawandi	24-11-89
10.	Mr. Naresh Morajkar	25-11-89
11.	Ms. Ujwala Asgaonkar	27-11-89
12.	Ms. Tilotama Tari	27-11-89
13.	Ms. Asha Shetye	27-11-89
14.	Mr. Arvind Shetkar	10-04-90
15.	Ms. Manisha Morajkar	11-04-90
16.	Mr. Anil Amerkar	01-08-90
17.	Mr. T. Shetye	17-09-90
18.	Ms. Chaya Joshi	17-09-90
19.	Mr. Babaji Amerkar	17-10-90
20.	Mr. Meghashyam Kambli	27-03-90
21.	Mr. Sudhakar Kambli	28-11-92
22.	Mr. S. Pursekar	01-12-92

III ANNEXURE "C"

Sr. No.	Names	Date of Joining
1.	Mr. S. Korgaonkar	08-12-92
2.	Ms. Neeta Korgaonkar	16-12-92
3.	Ms. Shoba Taral	16-12-92
4.	Ms Asha Kashalkar	17-12-92
5.	Ms. Pravina Morajkar	18-12-92
6.	Mr. Ravindra Talkar	22-03-93
7.	Ms. Versha Kerkar	22-03-93
8.	Mr. Umesh Hiroji	22-03-93
9.	Mr. Krishna Sawant	20-12-93
10.	Mr. Anil Sawant	20-12-93
11.	Mr. R. Salgaonkar	20-12-93
12.	Ms. Swati Kamulkar	24-02-93
13.	Ms. Kalpana Gaonkar	08-02-94
14.	Mr. I. Bagkar	

IV ANNEXURE "D"

Sr. No.	Names	Date of joining
01.	Ms. Lata Shirodkar Internal Cleaning	16-12-92
02.	Mr. Shantaram Gurav, Gardening	19-03-93
03.	Mr. Manjunath Naik, Internal Cleaning	22-03-93
04.	Ms. Anita Kambli, Internal Cleaning	23-12-93
05.	Ms. Archana Kambli, Internal Cleaning	23-12-93
06.	Mr. K. Korgaonkar, Gardening	19-03-94

No order as to cost.

Inform the Government accordingly.

Sd/-

(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

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